



Report to the Governor
C.L. "Butch" Otter
and the
1st Regular Session of the
64th Idaho Legislature

IDAHO JUDICIARY

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PRETRIAL JUSTICE: JUSTICE BEGINS AT THE BEGINNING

Idaho benefits when judges make more informed release decisions. On one level, funding the operation of the local jail is a significant financial burden on the county taxpayers. On another level, the safety of the community is enhanced when informed decisions are made. Pretrial programs throughout the country have significantly impacted and decreased the incarceration costs of defendants deemed safe to monitor in the community.

The Pretrial Origin

The first pretrial services program was implemented in 1961 in New York City to address jail overcrowding and coincided with the implementation of the Manhattan Bail Project study. The study was designed to improve information to the court about a defendant's ties to the community and how that would impact the judiciary's decision at first appearance. Based on these interviews, low risk individuals were recommended for release on their own recognizance, or the defendants' promise to appear without financial obligation. Those individuals deemed a high risk were detained with the goal of protecting the community. *An evaluation of the project found that low risk defendants who did not have to post bond were just as likely to return to court as those who did post bond.*¹ With the success of the Manhattan Bail Project, several jurisdictions across the country began to implement pretrial services programs to address jail overcrowding and to reduce the cost of incarceration, and lessen unnecessary expense to low risk defendants who could then use those monies toward other needs such as paying their own attorney or restitution.

Pretrial - Alternatives to Incarceration

Nationwide, there are 300 – 400 state and local pretrial services programs that serve a myriad of functions. The pretrial stage of the criminal justice system uses a combination of law enforcement, court, and county jail resources. **The two fundamental goals of pretrial are to assure the appearance of defendants in court and to assure community safety.** The program operates under six fundamental functions that guide implementation and operation. The functions prescribe how a pretrial services unit will provide the information to the judiciary, safely monitor the supervised release of defendants, and report progress to stakeholders.

Pretrial Functions

- *Verification of defendant information*
- *Universal screening of all defendants*
- *Assessment of risk*
- *Follow up interviews of defendants unable to meet financial obligations of release*
- *Accountable monitoring and supervision of defendants in the community*
- *Report outcome measures to stakeholders.*

Multiple organizations have issued policy statements supporting a risk-based pretrial system that include: the Association of Prosecuting Attorneys, The American Council of Chief Defenders, the International Association of Chiefs of Police, the American Jail Association, the National Association of Counties, and the American Probation and Parole Association². A comprehensive pretrial system can improve efficiency within the criminal justice system by securing jail space for dangerous defendants and releasing low risk individuals to be safely monitored in the community.

The American Bar Association standards recommend every jurisdiction establish and use a pretrial service program to gather information about defendants, assess each defendant's risk of endangering the community or failing to appear in court, and use that information to make recommendations to the court.³

¹ Freed, D. J.; Wald, P. M. (1964). "Bail in the United States: 1964". *U.S. Department of Justice*

² Copies of these policy statements can be found at: <http://www.pretrial.org/OurServices/Advocacy/Pages/default.aspx>

³ ABA Pretrial Release Standard 10-1.10

Cost Savings to Incarceration - An Example

In FY2007, the population of the Okaloosa County Jail in Florida averaged 695 inmates each day, which was 117% of capacity. That same year the county planned a major expansion of bed space at the jail at an estimated construction cost of \$12.5 million with an annual operating cost of \$3.5 million.

In 2008, before proceeding with the expansion, the county invested in improving its pretrial services program in order to safely reduce its jail population. By March 2011, the average daily population dropped to 464 inmates, 22% below capacity and saved the county \$27 million. The county then placed on hold its plans for the jail expansion.

Pretrial Justice - Idaho Based Solutions

Idaho's work on Pretrial Justice is an outgrowth of statewide and local efforts to protect community safety and ensure the appearance of defendants through evidence-based practices. Currently, despite specific statutory authority, 30 counties in Idaho provide a variety of pretrial supervision programs. This year the Idaho courts will propose legislation to explicitly authorize these programs and provide a funding mechanism to support Idaho's counties.

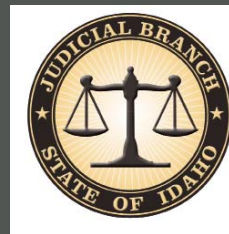
In 2014, Idaho was one of five states invited to the National Center for State Courts' Pretrial Justice Policy Forum in Washington, DC to develop an action plan to promote pretrial justice across the state. In July 2014, the Idaho Criminal Justice Commission formed a Pretrial Justice Planning Subcommittee charged with examining current pretrial justice practices in Idaho and establishing statewide recommendations.

The Subcommittee heard from national experts, established programs throughout the nation, and Idaho programs regarding their efforts to increase appearance rates and reduce criminal activity. Pretrial programs in Idaho can be a valuable resource for making significant improvements in the criminal justice system in the early stages of the criminal case process.

The subcommittee members reviewed current practices in Idaho and developed recommendations based upon the foundational principles of Pretrial Justice. The recommendations aim to enhance the existing pretrial programs in Idaho and establish a strong foundation for future programs.

Pretrial will assist local officials to manage jail populations by reducing the amount of low risk defendants that can be safely monitored in the community as well as identification of those defendants that are high risk that pose a threat to the safety of the citizens of Idaho.

Idaho currently has 30 counties that perform pretrial activities utilizing 70 staff monitoring 1900 defendants.



Mission Statement of the Idaho Courts

As the Third Branch of Government, we provide access to justice by ensuring fair processes and the timely, impartial resolution of cases.

The Idaho Courts stand for:
Integrity
Fairness
Independence
Respect
Excellence
Innovation

The Idaho Courts strive to:

Provide Timely, Impartial Case Resolution through Legally Fair Procedures

Ensure Access to Justice

Promote Effective, Innovative Services

Increase Public Trust and Confidence in Idaho Courts

Adopted by the
Supreme Court
October 31, 2011
and revised
April 25, 2016

Pretrial Justice - Recommendations

In 2017, the Idaho Criminal Justice Commission adopted the following recommendations in regard to pretrial in Idaho.

Recommendation 1: Risk Assessment

Recommends Idaho will utilize a standardized risk assessment tool for the judges' considerations, in making pretrial release decisions.

Recommendation 2: Representation at Arraignment

Recommends jurisdictions ensure defense counsel and prosecution be available at initial appearance.

Recommendation 3: Data Collection

Recommends Idaho utilize a central and standardized statewide case management information system.

Recommendation 4: Pretrial Monitoring and Supervision

Recommends that all Idaho Pretrial Services Units develop and implement monitoring and supervision policies and practices.

Recommendation 5: Citations in Lieu of Arrest

Citations in Lieu of Arrest (CILA) training be expanded through the Idaho Peace Officers Standards and Training (POST) and the respective agencies' Field Training Officer programs.

Recommendation 6: Preventive Detention

Recommends a proposed amendment to ART. 1, § 6, of the Idaho Constitution.

Right to Bail -- Cruel and Unusual Punishments Prohibited. All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great and in situations in which bail may be denied under this section. Excessive bail shall not be required, nor excess fines imposed, nor cruel and unusual punishments inflicted.

A court may deny bail pending trial for a defendant charged with a dangerous crime, as defined by the legislature, if upon motion of the court or the prosecuting authority and a hearing, the court finds, by clear and convincing evidence, that no bail or release conditions or combination thereof will reasonably protect the safety of any other person or the community or reasonably assure the defendant's appearance at trial.

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